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LAST WILL AND TESTAMENT

WHAT IS A LAST WILL AND TESTAMENT?

A Last Will and Testament is the legal document which controls the distribution of your property at death. A will is not effective until death. If you die without a will, the law of the state of your residence will direct how your assets are distributed, not you. Furthermore, without a will you will not have any control over who will be in charge of your affairs when you die. Nor will you have control over who will raise your minor children. As long as you are alive, your will has no effect on your assets.

CAN MY LAST WILL AND TESTAMENT BE CHANGED?

Yes. Changes to a will are made by drafting a new will and destroying the old one. *DO NOT MAKE ANY CHANGES TO YOUR WILL* without consulting an attorney. Changes on the face of your original may make it invalid.

FOR PURPOSES OF MY WILL, WHAT IS MY STATE OF LEGAL RESIDENCE?

Legal residence (or more precisely, domicile) is determined by a two-part test that includes (1) physical presence in the state, and (2) intent to permanently remain in the state. This two-part test is often difficult to apply to members of the military. Voting, paying taxes, owning property, motor vehicle registration and licensing are some factors to consider when determining one's state of legal residence.

IS MY LEGAL RESIDENCE IMPORTANT WITH REGARD TO MY WILL?

Maybe. Your legal residence may affect where your will is probated and may affect the amount of state inheritance or estate tax that may have to be paid at death.

WHAT IS MY ESTATE?

Your estate consists of all of your property and personal belongings which you own or are entitled to possess at the time of your death. This includes real and personal property, cash, savings and checking accounts, stocks, bonds, real estate, automobiles, etc. Although the proceeds of insurance policies may be considered part of your estate



in some states, a will does not change the designated beneficiaries of an insurance policy (such as SGLI or VGLI). Those must be changed on the insurance paperwork.

TO WHOM SHOULD I LEAVE MY ESTATE?

A person who receives property through a will is known as a beneficiary. You may leave all of your property to one beneficiary, or you may wish to divide your estate among several people. You may state in your will that several different items of property or sums of money shall go to different persons. In any event, you should decide on at least two levels of beneficiaries: *PRIMARY BENEFICIARIES* -- those who will inherit your property upon your death; and *SECONDARY BENEFICIARIES* -- those who will inherit your property in the event the primary beneficiaries die before you.

MAY A PERSON DISPOSE OF HIS PROPERTY IN ANY WAY?

Almost, but not quite. For example, in some states a married person cannot completely exclude a spouse. Generally, you are free to give your property to whomever you desire. However, most states have laws which entitle a surviving spouse to at least part of the decedent spouse's estate. Insurance proceeds and jointly owned property may be controlled by other provisions of the law. If you have questions concerning the elective share law in your home state, you should ask a legal assistance attorney.

SHOULD I NAME A GUARDIAN FOR MY CHILDREN IN MY WILL?

Yes. A guardian should be named in a will to ensure that the children and their estates are cared for in the event that both parents should die when the child is still a minor. Your guardian should be chosen with extreme care because this person will be charged with the duty of raising your children and managing their legal affairs and assets. Such factors as the age of the guardian, age of the children, religion, social status, economics, and relation of the proposed guardian to the children, if any, should be considered in making your decision. An alternate guardian should also be considered, but should also be chosen with the same care as the primary guardian just in case the primary guardian cannot serve in that capacity.

I WANT MY PARENTS TO BE THE GUARDIANS OF OUR CHILDREN AND MY SPOUSE DISAGREES. DO WE HAVE TO AGREE ON THE APPOINTMENT OF GUARDIANS?

Maybe. As an example, if the husband's will nominates his parents and the wife's will nominates her parents, and both husband and wife die at or about the same time, then *the court* will have to decide who is the proper party to be the children's guardian. That may cause undue hardship on all parties concerned. If you are divorced and you die,



your appointment of a guardian will not normally control over the rights of the other biological or adoptive parent.

WHAT IS AN EXECUTOR?

An executor, or personal representative, is the person who will manage and settle your estate according to the will. You should also consider naming at least one alternate executor in the event that your primary executor is unable or unwilling to act as the executor of your estate.

WHAT IF I WANT TO SET UP A TRUST?

You may want to set up a trust for minor children. This is especially true when the other parent of your children is an ex spouse. A trust may be set up for all of the assets in your estate or just for the SGLI (or other life insurance) or both. The primary purpose of a trust is so that money is protected and may be used to raise your children. You will decide in your will at what age any remaining money or assets are turned over to the child after reaching adulthood (for example, age 18, 21, or 25). If you desire to set up a trust, you will need to name a trustee who will be responsible for managing the money and determining appropriate withdrawals of the money according to the terms of the trust.

HOW LONG IS A WILL VALID?

A properly written will remains valid until it is changed or revoked. However, changes in circumstances after a will has been made, such as tax laws, marriage, birth of children, or even a substantial change in the nature or amount of a person's estate can affect whether your will is still adequate. All changes in circumstances require a careful analysis and reconsideration of the provisions of a will and may make it wise to change the will.

DOES A WILL INCREASE PROBATE EXPENSE?

A. No. Probate is the legal process used to close the estate of the decedent. It usually costs less to administer an estate when a person leaves a will than when there is no will. A properly drafted will may reduce the expense of administration in a number of ways. Provisions can be placed in wills which take full advantage of the federal and state tax laws. A will can avoid the expense of posting bond or appointing a guardian for your children. A will can save money for you and your family if it is properly drafted.

WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH HUSBAND AND WIFE?



Joint bank accounts and real property held in the names of both husband and wife with right of survivorship usually pass to the survivor by law and not by the terms of the deceased's will. There are cases, however, in which it is not to your advantage to hold property in this manner. Other assets may also pass outside a will if they are a Transfer on Death or Pay on Death assets. Examples of this may include investment accounts. A few states allow a husband and wife to create a joint document called a Community Property Agreement. This document allows assets formerly held by just one spouse to become community assets which automatically pass to the surviving spouse at death outside of the will.

IF MY ESTATE IS OVER \$1 MILLION, SHOULD I HIRE A PRIVATE ATTORNEY?

Maybe. As you attain more wealth certain tax consequences come into play. A civilian estate attorney can make sure that unnecessary taxes are taken out of your estate at the time of your death. If you are unsure whether you need a civilian estate planning attorney please ask an attorney at the legal assistance office.

WHAT IF I STILL HAVE QUESTIONS REGARDING MY WILL?

Ask them while your legal assistance attorney is preparing your will. Be sure that you convey your wishes for the distribution of your property accurately to him or her.